IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.453 OF 2007
IN
APPEAL FROM ORDER NO.1013 OF 2003

Maud D'Penna & Ors. ...Applicants

vs.

M/s.Vandana Co-operative Hsg.Soc.Ltd. & Ors. ...Respondents

Mr.A.G.Damble i/b Mr.J.P.Dubey for the Applicants.
Mr.S.A.Ahmed i/b Thakker & Associates for the Respondents.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Heard Advocates for the parties. Application for restoration of the Appeal is strongly opposed by the Advocate for the contesting Respondents. He invited my attention to the averments made in the Application and in particular in paragraphs 12 and 13 of the Application and contended that Affidavit of the Advocate referred to in paragraph 13 is not supplied to the Respondents. He, therefore, submitted that the case made out in the Application is malafide.

2. The Appeal has been dismissed under Rule 17 of Order XLI of the Code of Civil Procedure,1908 as the Advocate for the Appellant was absent. Once the Appellant engages services of an Advocate, it is not necessary for the Appellant to personally remain present in the court on the date on which the Appeal is fixed for hearing. This is the view taken by

this Court in two reported Judgment. There is no negligence on the part of the Appellant. Therefore, a case is made out for restoration of the Appeal and accordingly, Application is allowed in terms of prayer clauses (a) and (b).

3. Place the Appeal for admission 18th July 2007. Ad-interim relief granted in Appeal will continue to operate till the next date.

JUDGE